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ABSTRACT

An overview of energy emergency legislation in the fifty states, American Samoa, and Puerto Rico is given in this report. Descriptions of specific provisions of state legislation are included to illustrate the many methods by which authority to deal with an energy emergency may be incorporated into the general body of state law. The information provided in this report should prove useful to states in developing new legislation or in reusing already enacted legislation. The three sections of this publication, excluding the nine appendicies which exemplify legislative situations generalized in the text, are: (1) State energy emergency legislation: the current situation; (2) Composite of state energy emergency legislation; and (3) Future direction: staff commentary. It is pointed out that many states lack legislation which enables the governor to respond effectively to an energy emergency. (RR/MR)

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Foreword

Governors must have sufficient authority to act in the face of severe energy emergencies.

Policy Positions,
National Governors' Association

In recent years, the United States has experienced several temporary but disruptive energy shortages or supply interruptions. Because of our failure to anticipate and plan for these shortfalls in the past, action to alleviate the adverse impact has frequently been delayed or ineffective.

In July 1977, the Governors met with administration officials at the White House to discuss energy. Energy emergency preparedness was stressed as a matter of immediate concern to both the states and the federal government. The administration has recognized the important role of the states in developing and implementing a national energy emergency plan. States must recognize this responsibility and endeavor to ensure the formulation of a program that will prevent or minimize the impact of future shortfalls. Clear authority to react to an energy emergency is essential to a state's ability to respond effectively to such a crisis situation.

An overview of energy emergency legislation in the fifty states, American Samoa, and Puerto Rico is given in this report. Descriptions of specific provisions of state legislation are included to illustrate the many methods by which authority to deal with an energy emergency may be incorporated into the general body of state law. The information provided in the report should prove useful to states in developing new legislation or in revising already enacted legislation.

The evaluation of state authority is one step in an overall state and federal preparedness program. The states and the federal government must continue to work together to avert future energy emergencies.

Appreciation is extended to the many individuals from state offices who have made this study possible.

Robert Ray
Governor of Iowa
Chairman, NGA Subcommittee on
Energy Emergency Preparedness

Energy Emergency Preparedness

1. State Energy Emergency Legislation: The Current Situation

The 1973 oil embargo demonstrated to state governments the need for quick, effective emergency measures to handle short-term shortages of fuel and energy. The implementation of such emergency measures often requires the use of extraordinary powers by the Governor. In a 1973 study by the Office of Energy Conservation of the Department of the Interior, twenty-two Governors said that they did not have enough emergency authority to react with maximum effectiveness to the energy crisis.1/

Many Governors still do not have clearly defined authority to act in such an emergency. The emergency power legislation in states that have not yet passed specific energy emergency legislation is directed to war-time or natural disaster emergencies. Authority for extraordinary actions during an energy crisis may be included under a broad interpretation of this disaster legislation. Opinions of the offices of the attorneys general in some states have supported this broad interpretation of disaster legislation (see Appendix V). The energy emergency powers of the Governors of other states, however, remain unclear.

Authority for extraordinary actions during an energy resource shortage has been written into state legislation by (1) specific energy emergency provisions amended to existing disaster act legislation, (2) specific energy emergency provisions under a comprehensive state energy act, and (3) a state energy emergency act. (See Appendix IV for examples.)

Legislation of many states includes broad statements that grant authority "to meet extraordinary conditions arising out of the crisis, by taking such steps as are necessary and appropriate and generally to protect the peace, health, safety and welfare of the people." Some state legislation contains only this broad statement. Often it is followed by more specific provisions outlining energy emergency measures that are included "by way of further enumerated example rather than limitation."

The specificity of provisions depends mainly on which method has been used to incorporate the energy emergency clauses into the general body of legislation. Often, disaster act legislation is amended to cover energy emergency situations by adding only one or two words to the "emergency"

1/ From Council of State Governments, Special Report: The States and the Fuel and Energy Crisis (Lexington, Kentucky, 1973).

definition. For instance, in Kentucky, "disaster and emergency response" is defined as "the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to prevent, minimize, and repair injury and damage resulting from fire, flood, tornado, other natural or man-caused disasters, riot, enemy attack, sabotage, explosion, power failure, energy shortage, transportation or other causes." When incorporating energy emergency provisions into legislation in this manner, the procedures for declaring an energy emergency, the extent of extraordinary authorities in an energy crisis, and enforcement procedures become the same as in any other emergency situation, as established by the other provisions in the overall disaster act. In some states, in addition to the expanded definition of emergency, powers that are specifically necessary in an energy emergency situation are described in detail (see Appendix IVb for an example). Energy emergency provisions that have been incorporated into a comprehensive energy act often include procedures by which an energy emergency is declared and descriptions of specific energy emergency authorities. Items such as information-gathering procedures, however, may be included in other provisions of the energy act describing the routine activities of the energy department. Therefore, such items are excluded from provisions referring specifically to an emergency situation.

Differing state energy resource needs and state statutory and constitutional provisions account for other differences in energy emergency legislation. Much of the authority needed to deal with energy emergencies is available under the statutory authority of state agencies such as public utilities commissions (PUCs). The Wisconsin statutes say that the state public utility commission is "empowered to issue conditional, temporary, emergency, and supplemental orders." However, the ability of a public utility commission to prevent or mitigate an energy emergency may be limited by jurisdictional restrictions. In Washington, the Utilities and Transportation Commission has broad authority under Chapter 80.28 RCS to regulate state public utility companies, but legislation expressly excludes public utility districts, municipal utilities, electric cooperative associations, and joint operating agencies from the jurisdiction of the commission. 2/

Consideration of these individual state characteristics is important to an overall understanding of state energy emergency legislation.

2. Composite of State Energy Emergency Legislation 3/

Recent state energy emergency legislation has contained versions of the following general sections.

2/ Northwest Energy Policy Project, Study Module IV Final Report, "Energy Contingency Planning," 1977, p. iv-3.

3/ These example provisions have been extracted from the enacted legislation of the following states: California, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Tennessee, Vermont, Virginia, Washington, West Virginia, Puerto Rico, and American Samoa. States enclosed in parentheses are provided as examples and are not all inclusive.

Definitions. "Energy emergency" often is defined as a condition of "danger to the health, safety, and welfare, or economic well-being of the citizens" due to an energy resource shortage. Many states, such as Connecticut, Hawaii, Maryland, New York, and Tennessee, extend this definition to include an impending energy shortage. This definition minimizes the need to provide proof of the existence or occurrence of a triggering event. In Hawaii, a shortage is defined as a quantifiably determinable event, based on average amounts of gasoline available. The legislation in Washington and Montana designates extraordinary powers to be granted depending upon the severity of the energy resource shortage. A distinction is made between "energy alert" situations and actual "energy emergencies." In California's legislation, reference is made to the emergency situations from which an energy emergency may arise. A "sudden and severe energy shortage" is defined as "a rapid unforeseen shortage of energy, resulting from, but not limited to, events such as an embargo, sabotage, or natural disasters." Conditions resulting from a labor controversy, however, are specifically excluded from the emergency definition. In Illinois, "extended periods of inclement weather" are expressly included in the emergency definition.

Definitions of "energy resources" vary. Usually, the definition includes "electricity, natural gas, petroleum, coal, wood fuels, geothermal sources, radioactive materials and other resources yielding energy" (Oregon). Often the inclusion of nuclear materials, electricity, or solar and hydraulic energy is specifically emphasized in the definition of "energy resources." The legislation of Tennessee includes emergencies resulting from electrical power generating facilities, transport of energy resources, or production, use, or disposal of nuclear materials. In Kansas, a shortage of agricultural fertilizers is specifically excluded from warranting an emergency situation. Some state legislation refers only to one or two specific energy resources. Hawaii's legislation refers only to petroleum shortages. The legislation of Louisiana concentrates on possible shortages of natural gas. Idaho's legislation concentrates on electric utilities, although it does refer to other energy emergency situations.

Procedures for Determining and Declaring a State of Energy Emergency/Specification of Duration of Emergency Powers. In general, the Governor can declare a state of energy emergency without legislative approval effective immediately upon proclamation and extending a specified time before the need for legislative approval. In some states, additional review or approval of the emergency declaration may be required by other state entities.

Methods for declaring a state of energy emergency in various states are outlined below.

1. In Kansas, the Governor's proclamation is subject to approval by six members of the state finance council.

2. In Maryland, the Governor must submit his initial emergency orders to a committee of the legislature for approval. If the committee fails to take action within seven days, the orders of the Governor stand. Under extenuating circumstances, measures can be implemented immediately, subject to reversal by the full committee within five days of the order.

3. In Vermont, the Governor submits his proclamation to the general assembly for approval. If there is no action by the state legislature within five days, the proclamation stands.

4. In North Carolina, a special legislative committee on energy crisis management is convened within twenty-four hours of the declaration by the Governor.

5. In New Hampshire, the Governor can proclaim a state of emergency with the advice and consent of the Energy Council.

6. In Iowa, the Energy Policy Council recommends to the Governor by resolution that an impending shortage of usable energy may occur. Within thirty days, the Governor may declare an emergency. The general assembly may revoke, by concurrent resolution, any proclamation of an emergency issued by the Governor.

7. In Maine, the Governor submits his proclamation to the Executive Council for approval. If there is no action within five days, the proclamation stands. If prior approval is not feasible, the proclamation is effective immediately, subject to reversal by the Executive Council.

8. Oregon requires consultation with the president and the majority and minority leaders of the senate and of the house of representatives.

9. In Idaho, the Public Utilities Commission, rather than the Governor, has legislative authority to declare a state of emergency and take extraordinary actions in the case of an electric power or gas emergency.

Legislation usually requires the emergency proclamation to include an explanation of the need for emergency actions and specification of the area of the state where the emergency exists. In Hawaii, the Governor is required to publicize the declaration and rules within five days. Other states have similar requirements.

Information Collection. Many state acts include provisions for investigations and surveys to determine whether an emergency condition exists. In some states, studies must include an energy resource curtailment priority listing. Many acts call for the creation of energy emergency contingency plans (North Carolina, Oregon, Louisiana, and Kansas). In Florida, the energy emergency plan must be developed in coordination with the state PUC, "which will have exclusive responsibility for electrical emergency contingency plans." Many states require suppliers to file a plan of curtailment with the appropriate agency (Idaho). In California, each electric utility, gas utility, and fuel wholesaler or manufacturer in the state is required to prepare and submit to the Energy Commission a proposed emergency load curtailment plan or energy emergency supply distribution plan. The commission is to encourage electric utilities to cooperate in joint preparation of these plans. In addition, the commission is authorized to collect relevant information from government agencies, including the PUC and the Office of Emergency Services. Both the California Energy Commission and the North Carolina Energy Council are authorized to study and propose additional legislation that may be required in an energy emergency situation.

To assure adequate information flow regarding the energy shortage during the state of emergency, the Governor and/or the energy office "may hold hearings and receive evidence for the purposes of any inquiry relating to the supply and demand situation of the energy resources" (Kansas). Legislation in Puerto Rico and Oregon guarantees confidentiality of commercial reports. Some states have established a special energy emergency advisory committee to monitor the energy resource situation. Inquiries may involve issuing subpoenas or taking depositions.

General Clause Defining the Governor's Powers. Some energy emergency legislation contains only this clause.

Provisions Enumerating a Number of Specific Actions Included in the Governor's Extraordinary Powers. Often, a broad allocation/rationing/distribution/conservation provision is included in energy emergency legislation. For instance, Maine's legislation grants authority to "establish and implement programs, controls, standards, priorities and quotas for the allocation, conservation, and consumption of energy resources." Similar language is used in Vermont's legislation: The Governor "may by executive order promulgate such orders, rules, and regulations for the establishment and implementation of plans, programs, controls, priorities, quotas, allocations or other measures as he may deem necessary to meet and deal with the emergency."

This type of broad provision is often followed by more specific provisions, such as:

1. Creation of a state energy emergency office, reorganization of state agencies, and/or reassignment of state personnel to carry out the act.

2. Suspension of existing standards and routines during an emergency shortage, such as pollution control standards, type and composition of various energy resources, and transportation routes, schedules, and speed limits, including suspension of truck weight restrictions, as is done in Maine, Vermont, and Oregon. In Maine, the Board of Environmental Protection issues waivers on pollution control standards that are limited to sixty days. A similar system is used in New York, where waivers for up to thirty days are issued with the possibility of extensions for good cause.

3. Operational measures, such as curtailment of public and private transportation use (Iowa); extraordinary conservation measures; restriction of the degree of heating or cooling in public buildings, commercial and industrial establishments, and private homes (Georgia and Maine); regulation of hours and days of operation of public buildings, commercial and industrial establishments, and educational institutions (Maine); promotion of energy resource conservation and prevention of waste by state agencies and political subdivisions of the state (Oregon); electricity curtailment; regulation of energy utilities; regulation of exports; and the purchase and resale of energy resource products by the state (Hawaii). Some states also restrict sale days and times for energy resources, limit the amount of daily dealer sales, and restrict consumer consumption. Legislation in Iowa permits the establishment of a system for the distribution and supply of energy but specifically excludes coupon rationing unless the program is federally mandated. There are also provisions for the allocation of energy resources. Some states refer to specific energy resources. For instance, Louisiana's

legislation refers to natural gas. Legislation in Georgia includes the authority "to allocate, except where by law this authority is granted to the PSC [Public Service Commission], any energy resource." In Iowa, the Energy Policy Council is authorized to allocate state-owned or operated energy supplies to those determined to be in need: "In the performance of this duty the director may, with the approval of the council, contract with fuel suppliers for the purpose of establishing state-owned emergency fuel reserve."

4. Measures for financial support of energy emergency programs. Legislation has included the right to draw on general funds under emergency conditions (Montana); the right to incur liabilities and expenses; and the right to draw on special funds (Petroleum Products Control Fund in Hawaii).

5. Establishment of regional programs and agreements for coordinating energy resource programs of the state with programs of the federal government and other states and localities (Georgia, Maryland, and Vermont).

6. Authority to implement federal mandatory allocation programs (Vermont, Florida, Oregon, and Maryland). Some state legislation specifies that orders must be made with due consideration for and be consistent with federal regulations (Washington).

7. Qualifying provision for "fair and equitable" allocation in a manner designed to avoid undue hardship (Oregon and New York). In Georgia, emergency welfare is included as a function in "the preparation for the carrying out of all emergency functions." Vermont's legislation includes a provision for emergency assistance to persons whose health, safety, or welfare is threatened as a direct or indirect result of the energy emergency. Some states, such as Montana, require equitable distribution among geographic areas. Kentucky, Michigan, Connecticut, and Massachusetts have enacted or proposed special legislation to provide funds to help pay fuel bills of low- or fixed-income individuals.

8. Reimbursement for the allocation of energy between regulated distributors, which is subject to approval of the utility commission (Washington). A distributor is authorized to enter into agreements with another distributor for the purpose of determining financial or commodity reimbursement.

Penalties and Enforcement Clauses. In most states, violation of the energy emergency provisions are misdemeanors, with maximum fines ranging from $100 to $1,000. Oregon allows energy supplies to be cut off to recalcitrant individuals or groups. Guam has a heavier penalty: imprisonment for illegal exportation of oil fuel. Many states have legislation that stresses that the Governor should, to the extent possible, encourage and rely on voluntary programs.

Appeals and Petitions. Many acts include provisions for petitioning the Governor or a delegated state agency for exclusion from energy resource restrictions. In Georgia, a three-member "hardship committee" is created to grant exemptions. In other states, appeals may be made to the state or federal court.

Termination. Most legislation provides for the termination of emergency powers after the Governor declares that the emergency no longer exists or by concurrent resolution of the state legislature.

Additional Clauses. Additional clauses contained in some of the legislation are:

1. A state of energy emergency includes all previously set-forth emergency powers.

2. Conflict of law: This act supercedes others that are inconsistent with it (Maryland, Montana, Vermont and Georgia).

3. Severability clause: If any provision of the act is held invalid, such invalidity shall not affect other provisions or application of the act.

4. Delegation of powers: The Governor may appoint or employ temporary boards, agencies, officers, employees, or other persons to carry out the provisions of the act.

5. Liability clause: State officials and/or suppliers of energy resources shall not be held liable for actions taken pursuant to an order under this act. The few opinions that have been rendered regarding questions of liability have been favorable to the Governor.

6. Limitations on the Governor's authority: This often limits the use of property during an energy emergency to previously specified provisions (Maine, Vermont, and Georgia).

7. Legislative action: The act shall not be "deemed to limit the power of the General Assembly to supercede any action of the Governor at any time" (Vermont).

Maryland law calls for the development of legislation outlining the relationship between the executive and legislative branches of state government as their functions relate to energy utilization.

3. Future Direction: Staff Commentary

Because of the potential for energy shortages in the future, the viability of each state's energy emergency legislation should be considered. In some states, authority to handle problems arising from an energy resource shortage may be broadly interpreted under general disaster act legislation or may be derived from the regular authorities of established state agencies. In the midst of an immediate energy emergency, however, Governors cannot wait for opinions that define the scope of these powers. A survey of reactions by states to the energy shortage of 1976-77 indicates that the powers of the Governor were often limited. Legislation did not clearly permit necessary action.4/

4/ Survey conducted by the National Governors' Association, July 1977.

General criteria for adequate energy emergency statutory provisions must be established. An important consideration in establishing such criteria is whether or not the current legislation permits the necessary state-federal cooperation to respond effectively to an immediate national, regional, or state energy resource shortage. Those states that have legislation directed to a specific energy resource shortage should consider extending such legislation to cover all potential energy resource shortage areas. Energy emergency legislation should be extensive enough to cover indirect effects of an energy resource shortage, such as transportation congestion and increased crime. While outlining the powers granted to the Governor in an energy emergency situation, legislation should provide for adequate restraints.

Previously enacted legislation may serve as a guideline for the states that have not yet adopted specific emergency energy legislation (see Appendixes). Those states that have specific energy emergency legislation may wish to revise such legislation. The Model State Crisis Management legislation and the example of an amended state disaster act presented in a report by the Council of State Governments in 1973 may prove helpful (Appendix VI). These proposed model acts should be considered in light of local conditions, existing statutes, and other individual state requirements. Energy emergency legislation should be incorporated into the comprehensive energy preparedness program of each state.

Appendix I

STATES WITHOUT SPECIFIC ENERGY EMERGENCY LEGISLATION a/

Alabama	Nebraska
Alaska	North Dakota
Arizona b/	Oklahoma
Arkansas	Pennsylvania d/
Colorado	Rhode Island b/
Delaware	South Carolina b/ c/
Indiana b/	Texas
Massachusetts	Utah
Michigan c/	New Mexico
Mississippi	Wyoming d/
Missouri	

Note: Specific energy emergency legislation is defined for purposes of this report as legislation granting the authority to take extraordinary actions during an energy crisis.

a/ For unfootnoted states, authority for extraordinary powers may possibly be interpreted under a general disaster act, but no test has been made to assure this.

b/ Although these states do not have specific energy emergency provisions, authority for extraordinary powers in an emergency situation has been included under a broad interpretation of a general disaster act either through an opinion by the Office of the Attorney General or by an actual emergency situation in which extraordinary powers were employed.

c/ Pending legislation, March 1978.

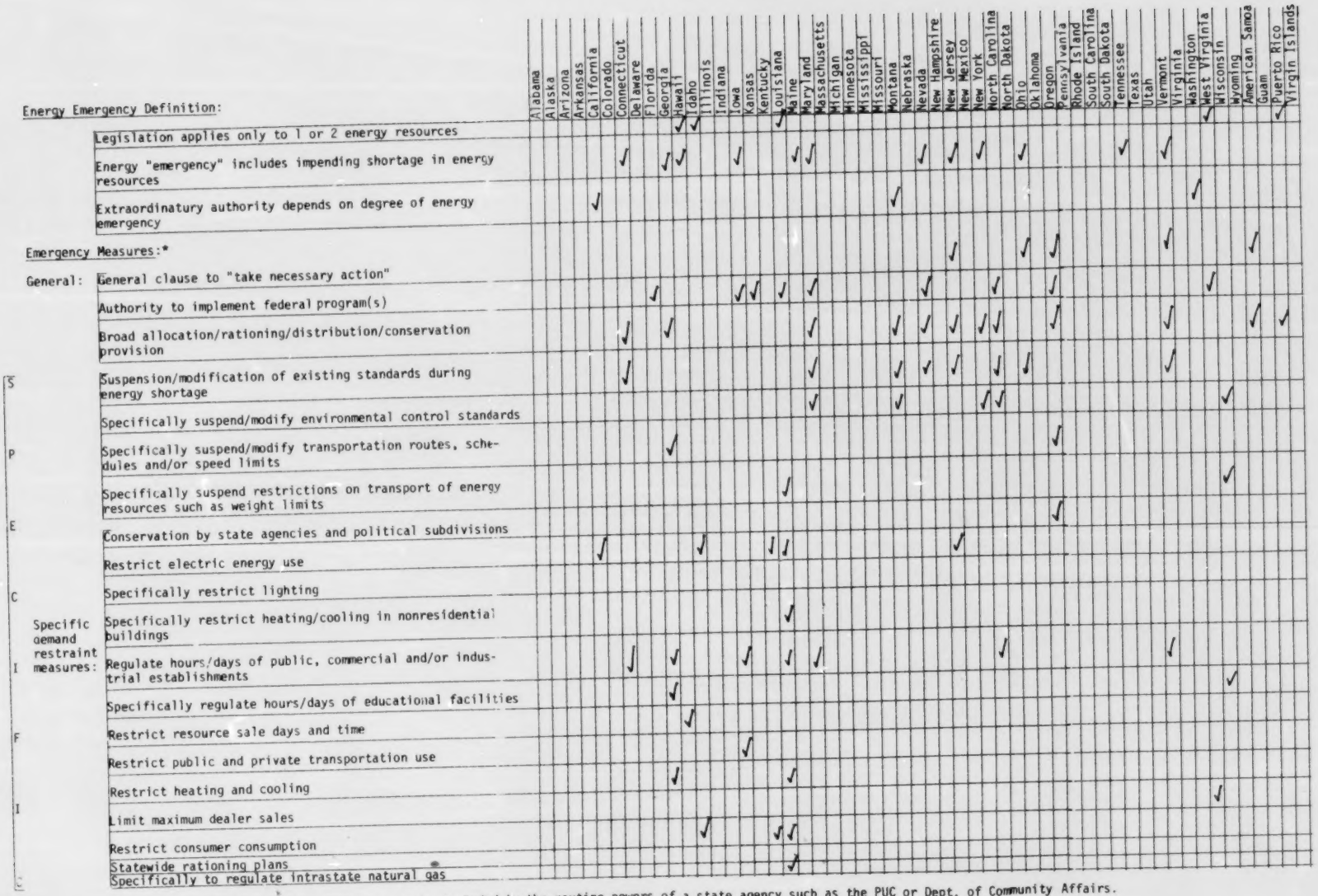
d/ Legislation expired July 1, 1977.

Source: Based on findings of the American Petroleum Institute, June 1977; letters from state Offices of the Attorney General, January 1977; and a state survey by the National Governors' Association, July-September 1977, with revisions made in January 1978. An attempt has been made to note legislative developments from January 1978 to the date of publication of this report.

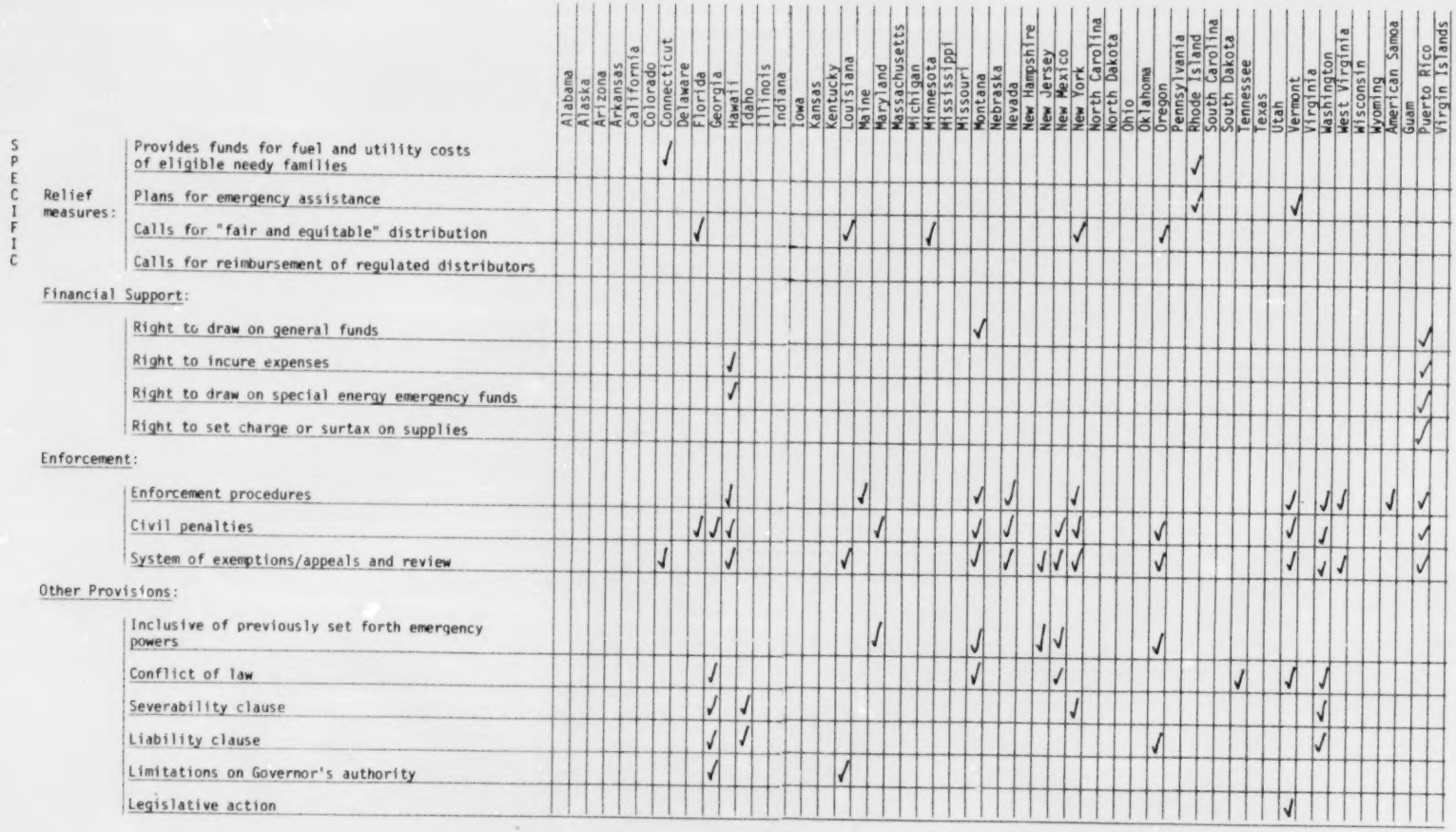
Appendix II

SUMMARY OF STATE ENERGY EMERGENCY LEGISLATION

Type of Legislation:		Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming	American Samoa	Guam	Puerto Rico	Virgin Islands
No specific energy emergency legislation:	Possibly applied under Disaster Act	✓	✓		✓		✓		✓													✓	✓		✓		✓		✓			✓		✓	✓		✓																	
	Previously applied or opinion rendered under Disaster Act			✓											✓																						✓	✓	✓														
Specific energy emergency legislation:	Amended to Disaster Act					✓			✓					✓			✓		✓	✓										✓											✓	✓			✓		✓						
	Provisions in Energy Act				✓	✓		✓		✓	✓					✓	✓		✓					✓					✓	✓	✓		✓	✓	✓		✓												✓				
	Separate energy emergency legislation							✓			✓	✓	✓								✓						✓											✓						✓		✓		✓		✓		✓	✓	
Energy Emergency Management:																																																				
	Procedures for determining and declaring a state of energy emergency					✓		✓		✓		✓	✓			✓	✓	✓	✓	✓	✓			✓			✓		✓					✓		✓		✓							✓		✓	✓		✓		✓	
	Specifies length of emergency powers until legislative approval required															✓				✓	✓			✓			✓							✓		✓									✓		✓						
	Establishes energy emergency advisory committee																																✓													✓	✓				
	Provides for reorganization of state agencies/ assigns agency responsibilities/Delegation of powers					✓		✓		✓		✓				✓			✓	✓				✓					✓	✓			✓												✓		✓	✓				✓	
	Calls for federal/state/local coordination							✓			✓					✓	✓	✓	✓	✓	✓						✓							✓		✓		✓							✓		✓						
	Recognizes PUC authorities									✓	✓		✓			✓				✓							✓									✓	✓																	
Information Collecton & Emergency Preparation:																																																				
	Calls for prior investigations and surveys				✓	✓				✓		✓				✓								✓					✓					✓	✓		✓		✓							✓		✓		✓				
	Includes specific information gathering procedure					✓				✓		✓				✓								✓					✓	✓				✓				✓											✓					
	Calls for establishment of energy emergency plan(s)				✓	✓		✓		✓							✓		✓					✓			✓		✓			✓	✓	✓		✓													✓					
	Calls for curtailment priorities				✓												✓		✓					✓			✓				✓	✓	✓				✓										✓					
	Calls for collection of load curtailment plans					✓							✓																				✓																		
	Includes confidentiality of information									✓						✓													✓								✓											✓			✓	
	Calls for monitoring system									✓							✓		✓														✓				✓																
	Includes subpoena/deposition authority				✓							✓				✓			✓										✓	✓							✓											✓		✓				



*Authority to implement these measures may be included in the routine powers of a state agency such as the PUC or Dept. of Community Affairs.


SPECIFIC
Relief measures:
Provides funds for fuel and utility costs of eligible needy families
Plans for emergency assistance
Calls for "fair and equitable" distribution
Calls for reimbursement of regulated distributors
Financial Support:
Right to draw on general funds
Right to incure expenses
Right to draw on special energy emergency funds
Right to set charge or surtax on supplies
Enforcement:
Enforcement procedures
Civil penalties
System of exemptions/appeals and review
Other Provisions:
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Conflict of law
Severability clause
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Limitations on Governor's authority
Legislative action
Alabama
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Arizona
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California
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Georgia
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Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming
American Samoa
Guam
Puerto Rico
Virgin Islands

Appendix III

LIST OF ENABLING LEGISLATION

Copies of the following legislation were reviewed:

Arkansas--Energy Act, October 1977, calls for creation of contingency plans by energy agency but does not grant extraordinary powers.

California--Assembly Bill No. 446, June 1977, amending the California Emergency Services Act; Warren-Alquist State Energy Resources Conservation and Development Act, Sections 25700-25705, May 21, 1974.

Connecticut--Public Act No. 75-537, Section 7, establishing the Department of Energy and Planning Policy; Public Act No. 75-3, Fmergency Energy Assistance Program for 1975; Public Act No. 75-561, Emergency Energy Assistance Program for 1976.

Florida--Provisions in Energy Act (HB 770, July 1975) amending Disaster Preparedness Act of 1974 (74-285, Laws of Florida).

Georgia--Amendments in February 1977 to Disaster Preparedness Act of 1957; HB 1698, March 1976--Energy Office to prepare standby contingency plan.

Hawaii --"Procurement, Control, Distribution and Sale of Petroleum Products," Act 38--Session Laws of Hawaii, 1975, Chapter 125C Hawaii Revised Statutes.

Idaho--SB 1138, 1st regular session, 43rd legislature.

Illinois--HB 0222 amending Section 4 of the Illinois Emergency Services and Disaster Agency Act of 1975.

Iowa--Chapter 93, Code of Iowa, establishing the Energy Policy Council--effective to June 30, 1979.

Kansas--SB 13, establishing the Kansas Energy Office.

Kentucky--Chapter 39, National and State Defense, Section 39.401, 1976.

Extracted from a survey of state legislation provided by the Office of the Attorney General of the state or included in the energy legislation report of the National Conference of State Legislatures. Updated by a survey conducted by NGA staff, July-September 1977 and January 1978.

Louisiana--1977 revised version of Natural Resources and Energy Act of 1973.

Maine--37-A:57 amending Disaster Act.

Maryland--HB No. 835, Chap. 12, March 1976, amending Article 41, Section 15B (C-1), Annotated Code of Maryland. Maryland H 364, extending until March 15, 1979, the Governor's emergency energy powers, has been signed into law as Chapter 19, Acts of 1978.

Minnesota--Minnesota Statutes 1974, Section 116H.09 establishing Minnesota Energy Agency and directing the preparation of an Energy Emergency Conservation and Allocation Plan; a special act was passed empowering the Governor to "alter or adjust by executive order the working hours, work days and work weeks of...all state employees in the executive branch as he deems necessary to minimize state government's energy consumption" from January 18, 1977, to April 1, 1977.

Montana--HB762, 1977, amending Disaster Act, effective to March 1, 1979.

Nevada--SB 153, Section 141, granting authority to implement petroleum allocation or rationing programs, AB 64011977 grants emergency powers over water and energy to the Governor.

New Hampshire--SB 272, Chapter 234, Summer 1975, regarding the Office of Energy Administrator.

New Jersey--SB 3179, Chapter 146, New Jersey Energy Act, 1977.

New York--State Energy Law, Laws 1976, Chapter 819:2, Section 5-117, July 26, 1976.

North Carolina--Energy Policy Act, 1975 (SB 943, Chapter 877, 1975).

Ohio--HB 415, December 1977; Am. Sub. HB 584, Section 122.86-Section 122.87, August 26, 1975; Substitute H.B. 139, March 1977, granting Governor authority to declare an emergency upon recommendation by the Department of Agriculture that a shortage of petroleum or raw materials is jeopardizing the growth of field or vegetable crops.

Oregon--ORS 176.750-176.990, October 1, 1975, "Energy Resource Emergency Powers."

Tennessee--HB225, 1975 amended to Disaster Act (Public Chapter No. 54), Tennessee Code Annotated, Sections 7-601(a), 7-602(a), 7-607, 7-609, and 7-615(a).

Vermont--Energy Emergency Act, Public Acts, 1973, No. 145.

Virginia--Virginia Emergency Services and Disaster Law of 1973, amended to 44-146.13 to 44-146.28, Virginia Code (1950).

Washington--Substitute H.B. 928, Chapter 328, Laws of 1977, passed March 1977, amending Emergency Powers Bill, extends to June 30, 1980.

West Virginia--amended to Disaster Act in July 1975.

Wisconsin--Wisconsin Statutes 16.95, 16.955(1-4), 22.6, 93.06(3), 101.11, 115.01(21), 118.215, 121.17(4), 348.27(8), and Chapter 144 (NR154.02[4]).

American Samoa--Emergency Management of Sources of Energy, T.12:1801-1803, Chapter 7, 1974.

Puerto Rico--Oil Fuel Office Act, No. 4, July 9, 1973.

Appendix IVa

EXAMPLE OF SEPARATE ENERGY EMERGENCY LEGISLATION
(Montana)

CHAPTER NO. 577

AN ACT TO ESTABLISH NECESSARY ENERGY SUPPLY ALERT AND ENERGY EMERGENCY POWERS FOR THE GOVERNOR; ESTABLISHING AN ENERGY POLICY COMMITTEE; DEFINING CONDITIONS UNDER WHICH SUCH POWERS ARE TO BE EXERCISED; PROVIDING PENALTIES; PROVIDING A PERIOD OF EFFECTIVENESS; AND AMENDING SECTION 79-2501, R.C.M. 1947.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Legislative findings and intent. (1) The legislature finds that energy in various forms is increasingly subject to possible shortages and supply disruptions, to the point that there may be foreseen an emergency situation, and that without the ability to gather information, formulate plans, and institute appropriate emergency measures to reduce or allocate the usage of energy through a program of mandatory usage curtailment or allocation, a severe impact on the health, safety, and general welfare of our state's citizens may occur. The prevention or mitigation of the effects of such energy shortages or disruptions is necessary for preservation of the public health and welfare of the citizens of this state.

(2) It is the intent of this act to:

(a) establish necessary planning, information gathering, energy emergency powers for the governor and define the conditions under which such powers are to be exercised;

(b) provide penalties for violations of this act.

Section 2. Definitions. As used in this act, the following definitions apply:

(1) "Energy facility" means a facility which produces, extracts, converts, transports, or stores energy.

(2) "Energy" means petroleum or other liquid fuels, natural or synthetic fuel gas, or electricity.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, cooperative, association, firm, public utility, political subdivision, municipal corporation, government agency, joint operating agency, or any other entity, public or private, however organized.

(4) "Committee" means the energy policy commiteee established in section 3.

(5) "Distributor" means any person, private corporation, partnership, producer, individual proprietorship, public utility, joint operating agency or cooperative which engages in or is authorized to engage in the activity of generating, producing, transmitting, or distributing energy in this state.

(6) "Energy emergency" means an existing or imminent domestic, regional or national shortage of energy which will result in curtailment of essential services or production of essential goods, or the disruption of significant sectors of the economy unless action is taken to conserve or limit the use of the energy form involved, and the allocation of available energy supplies among users.

(7) "Energy supply alert" means a condition of energy supply on a national, regional, state or local basis which foreseeably will affect significantly the availability of essential energy supplies within the ensuing 90-day period unless action is taken under section 9 to reduce energy usage by state agencies and political subdivisions.

Section 3. Energy policy committee. (1) There is established a legislative energy policy committee which consists of four members. The members shall consist of the president of the senate and the floor leader of the opposite party in the senate and the speaker and minority leader of the house of representatives. Each leadership member shall designate, within 15 days following the close of the 1977 session, an alternate to serve for him when he is unable to attend meetings of the committee.

Section 4. Supply of vital public services during an energy supply alert and energy emergency. The governor shall, with the advice of the committee, in developing provisions for the allocation, conservation, and consumption of energy, give due consideration to supplying vital public services such as essential governmental operations, health and safety functions, emergency services, public mass transportation systems, food production and processing facilities, and energy supply facilities during conditions of an energy supply alert or energy emergency. In developing any energy allocation programs, provisions shall be made for the equitable distribution of energy among the geographic areas of the state which are experiencing an energy shortage.

Section 5. Information obtainable by governor. (1) The governor may obtain information from energy resource producers, suppliers, public agencies, and consumers and from political subdivisions in this state necessary for him, with advice of the committee, to determine the need for energy supply alert and emergency declarations. Such information may include but is not limited to:

(a) sales volumes by customer classifications;

(b) forecasts of energy resource requirements for the particular type of energy involved for a period not to exceed 2 years; and

(c) inventory of energy resources and reserves available for use in meeting a shortage in a particular energy source.

(2) In obtaining information under subsection (1) of this section during a state of energy emergency the governor may subpoena witnesses, material, and relevant books, papers, accounts, records, and memoranda; administer oaths; and cause the depositions of persons residing within or without Montana to be taken in the manner prescribed for depositions in civil actions in district courts, to obtain information relevant to energy resources that are the subject of the proclaimed emergency of associated disaster.

(3) In obtaining information under this section, the governor shall:

(a) seek to avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state, or local regulatory authority that is available for his study; and

(b) cause reporting procedures, including forms, to conform to existing requirements of federal, state, and local regulatory authorities.

(4) Nothing in this act shall require the disclosure by a distributor of confidential information, trade secrets, or other facts of a proprietary nature.

(5) The governor shall forward to the committee such information collected under this section as the committee may request and shall advise the committee of the progress of the information gathering process.

Section 6. Advice of distributors and consumers. The governor shall actively solicit the advice of consumers, through the legislative consumer committee established in 70-703, and of distributors throughout the information gathering, planning, and implementation process described in this act.

Section 7. Submission and approval of curtailment plans. (1) The governor may at any time require a distributor of an energy resource to prepare for his approval a plan for the curtailment of the distribution of that resource in the event of a state of energy emergency. Plans shall be submitted in such form and within such limits as the governor shall specify, and shall recognize the obligations and duties which may be placed upon distributors subject to this act by other jurisdictions, both state and federal.

(2) Approval of plans for curtailment shall be based on the following factors:

(a) the consistency of the plan with the public health, safety, and welfare;

(b) the technical feasibility of implementation of the plan;

(c) the effectiveness with which the plan minimizes the impact of any curtailment;

(d) the needs of commercial, agricultural, retail, professional, and service establishments whose normal function is to supply goods or services, or both, of an essential nature, including but not limited to food, lodging, fuel, and medical care facilities;

(e) the regional agreements or contracts of the distributors; and

(f) the advice of the committee.

Section 8. Governor's considerations. In determining whether to declare an energy supply alert or energy emergency, the governor shall consider:

(1) availability of regional and national energy resources;

(2) local, state, regional, and national energy needs and shortages;

(3) availability of short-term alternative supplies on a local, state, regional, and national basis;

(4) the economic effect of such declaration and the implementation of any curtailment or conservation plans;

(5) the advice of the committee; and

(6) any other relevant factors.

Section 9. Energy supply alert. (1) The governor may upon finding that an energy alert condition exists, declare the same for a period of not longer than 90 days, setting forth the reasons therefor. Such declaration may be renewed for 90-day periods thereafter upon a finding that the energy alert condition will continue for such further period.

(2) Whenever the governor has declared an energy supply alert, he may by executive order direct actions:

(a) reducing energy resource usage by state agencies and political subdivisions;

(b) promoting conservation, prevention of waste and salvage of energy resources and the materials, services, and facilities derived therefrom or dependent thereon, by state agencies and political subdivisions.

Section 10. Emergency -- powers of governor. In addition to his existing powers and duties, the governor shall have the following duties and special energy emergency powers subject to the definitions and limitations in this act:

(1) The governor with the advice of the committee may, upon finding that a situation exists which threatens to seriously disrupt or diminish energy supplies to the extent that life, health, or property may be jeopardized, declare a condition or state of energy emergency, at which time all of the general and specific emergency powers further enumerated in this section shall become effective.

(2) The condition of energy emergency terminates after 14 consecutive days unless extended by a declaration of the legislature by joint resolution of a continuing condition of energy emergency of a duration to be established by the legislature.

(3) The conditions of an energy emergency alternatively cease to exist upon a declaration to that effect by either of the following:

(a) the governor; or

(b) the legislature, by joint resolution if in regular or special session.

(4) In a declared state of energy emergency, the governor may, with the advice of the committee:

(a) implement such programs, controls, standards, priorities, and quotas for the production, allocation, conservation, and consumption of energy, including plans for the curtailment of energy; provided that in so doing, the governor shall impose controls, quotas, or curtailments according to the nature of the end use to be made of the energy consistent with existing transmission and distribution systems serving the geographic area affected by the energy emergency;

(b) suspend and modify existing pollution control standards and requirements or any other standards or requirements affecting or affected by the use of energy, including those relating to air or water quality control; and

(c) establish and implement regional programs and agreements for the purposes of coordinating the energy programs and actions of the state with those of the federal government and of other states, localities, and other persons.

(5) Nothing in this act means that any program, control, standard, priority quota, or other policy created under the authority of the emergency powers authorized by this act has any continuing legal effect after the cessation of a declared state of energy emergency.

(6) Because of the emergency nature of this act, all actions authorized or required hereunder or taken pursuant to any order issued by the governor are exempted from all requirements and provisions of the Montana Environmental Policy Act of 1971, including but not limited to the requirement for environmental impact statements.

(7) Except as provided in this section, nothing in this act exempts a person from compliance with the provisions of any other law, rule, or directive unless specifically ordered by the governor, or unless impossibility of compliance is a direct result of an order of the governor.

Section 11. Obligations of state and local executives. To protect the public welfare during conditions of energy alerts or emergencies, the chief executive of each political subdivision of the state, including local governments with self-government power, and each state agency shall carry out in his jurisdiction such energy supply alert or energy emergency measures as may be ordered by the governor.

Section 12. Coordination with federal provisions. In order to attain uniformity, as far as is practicable throughout the country in measures

taken to aid in energy crisis management, all action taken under this act and all orders and rules made pursuant to it shall be taken or made with due consideration for and consistent when practicable with the orders, rules, actions, recommendations, and requests of federal authorities.

Section 13. Compliance. Notwithstanding any provision of law or contract to the contrary, all persons who are specifically ordered by the governor with the advice of committee to comply with an order issued or action taken pursuant to this act shall comply.

Section 14. Orders to distributors. The governor may order any distributor to take such action on his behalf as may be required to implement orders issued pursuant to section 10 and no distributor or person is liable for actions taken in accordance with such order.

Section 15. Liability. No distributor or person is liable for damages to persons or property resulting from action taken in accordance with orders or regulations issued pursuant to this act or actions taken pursuant to orders, rules, actions, recommendations, and requests of federal authorities.

Section 16. Rules and executive orders. Notwithstanding the exemption from the provisions of the Montana Administrative Procedure Act granted to the governor in Title 82, chapter 42, R.C.M. 1947, the governor may adopt rules necessary to implement this act and cause their adoption and publication to be completed in the same manner as the adoption and publication of agency rules. In addition, executive orders of the governor implementing provisions of this act shall be published in the Montana Administrative Register upon request of the governor.

Section 17. Civil defense laws supplemented. The powers vested in the governor under this act are in addition to and not in lieu of emergency powers vested in him under Title 77, chapter 23, or any other law of Montana.

Section 18. Penalties. A person convicted of violating this act is guilty of a misdemeanor. Each day of violation, after notice of violation, shall constitute a separate offense.

Section 19. Section 79-2501, R.C.M. 1947, is amended to read as follows:

"79-2501. Governor may authorize expenditure in case of emergency or disaster. The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the governor, to meet contingencies and emergencies arising from hostile attacks, riots or insurrections, epidemics of disease, plagues of insects, fires, floods, <u>energy emergencies</u> or other acts of God resulting in damage or disaster to the works, building or property of the state or any political subdivision thereof, or which menace the health, welfare, safety, lives or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that such political jurisdiction has exhausted all available emergency levies, that the emergency is beyond the financial capability of the political jurisdiction to respond, and for which no appropriation is available in sufficient amount to meet the emergency or disaster, or that

Federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws."

Section 20. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. Period of effectiveness. This act is effective on passage and approval and shall remain in effect until March 1, 1979.

Approved May 13, 1977.

Appendix IVb

EXAMPLE OF PROVISIONS AMENDED TO DISASTER ACT
(Maine)

2. Energy Emergency Proclamation

A. Proclamation. Whenever an actual or impending acute shortage in usable energy resources threatens the health, safety or welfare of the citizens of the State, the Governor shall, by proclamation, declare that any energy emergency exists in any or all sections of the State, in the manner set forth in the first paragraph of subsection 1.

B. Powers. Upon the issuance of an energy emergency proclamation and after consulting with the Director of the Office of Energy Resources, the Governor is authorized to exercise all the powers granted in this chapter, except as may be specifically limited by this subsection and such powers shall include without limitation the authority to:

(1) Establish and implement programs, controls, standards, priorities and quotas for the allocation, conservation and consumption of energy resources;

(2) Regulate the hours and days during which nonresidential buildings may be open and the temperatures at which they may be maintained;

(3) Regulate the use of gasoline and diesel-powered land vehicles, watercraft and aircraft;

(4) After consulting, when appropriate, with the New England governors, and upon the recommendations of the Main Public Utilities Commission, regulate the generation, distribution and consumption of electricity;

(5) Establish temporary state and local boards and agencies;

(6) Establish and implement programs and agreements for the purposes of coordinating the emergency energy response of the State with those of the Federal Government and of other states and localities;

(7) Temporarily suspend truck weight and size regulations, but not in conflict with federal regulations;

(8) Regulate the storage, distribution and consumption of home heating oil.

C. Exclusions. In dealing with a declared energy emergency, the following powers granted by this chapter may not be invoked:

(1) The eminent domain powers granted in section 58;

(2) The enforcement powers granted in subsections 7 and 8 of section 59 and the enforcement powers granted in section 69, unless the Governor specifically invokes these powers by an order issued pursuant to an energy emergency proclamation and approved by a majority of the membership of the Legislative Council. Such order shall specify those emergency orders, rules or regulations which shall be enforceable pursuant to this paragraph and shall further specify the enforcement activities civil defense organizations are to pursue. No enforcement action may be taken pursuant to this paragraph without publication of the order authorizing such action in a manner reasonably calculated to give persons affected thereby adequate notice of the order, rule or regulation to be enforced and the sanctions to be applied.

D. Environmental regulations.

(1) Except as provided in subparagraph (2), nothing contained in this subsection shall be construed to authorize the Governor to suspend or to modify orders, regulations, standards or classifications issued or enforced by the Department of Environmental Protection or the Land Use Regulation Commission.

(2) At any time an energy emergency proclamation is in effect, the Governor may call the Board of Environmental Protection into extraordinary session to consider temporary waivers or suspensions of rules and standards related to air and water quality necessary to relieve then existing energy shortages. Thereupon, the board is empowered notwithstanding any other provision of law to approve such suspensions or waivers as it determines are necessary to relieve or avoid an energy shortage and will not result in environmental degradation of a permanent or enduring nature. In no event shall any suspension or modification be granted which will result in a circumvention of Title 38, sections 481 to 488, 541 and 557. No such waiver or suspension shall remain in effect longer than 60 days or after the date on which the board renders a further order issued pursuant to the regular procedures specified in Title 38, whichever shall first occur.

E. Approval of Executive Council.

(1) All orders, rules and regulations proposed by the Governor pursuant to the powers granted by this subsection shall be transmitted to the Executive Council and shall not be effective until approved by a majority of the Executive Council. In the event the council takes no action within 5 days of the transmittal date, such orders, rules or regulations shall become effective as proposed.

(2) In the event of an emergency in which it is not feasible to secure the prior approval of the Executive Council, an order, rule or regulation shall be made immediately effective and shall be promptly transmitted to the chairman of the council. Not later than 5 days following such communication, the council may by majority vote reverse any such order, rule or regulation.

Repeal

Subsection 2, E is repealed by 1975, c. 771, § 409, effective January 4, 1977

F. Judicial enforcement. The Superior Court of the county in which there occurs a failure to obey an order, rule or regulation promulgated in accordance with this subsection shall have jurisdiction to issue a restraining order or injunction to enforce said order, rule or regulation. Such proceeding shall be held in accordance with Rule 65 of the Maine Rules of Civil Procedure.

[G. Repealed]

H. Convene Legislature. In the event that any order, rule or regulation issued by the Governor pursuant to the powers granted in paragraph B are to be in effect for longer than 90 days, the Governor shall, before the 80th day following the issuance of said order, rule or regulation, convene the Legislature.

3. Termination of emergency. Whenever the Governor is satisfied that an emergency no longer exists, he shall terminate the proclamation by another proclamation affecting the sections of the State covered by the original proclamation, or any part thereof. Said proclamation shall be published in such newspapers of the State and posted in such places as the Governor, or the person acting in that capacity, deems appropriate.

1973, c. 757, § 2, eff. March 26, 1974; 1975, c. 582, §§ 1, 2, eff. June 25, 1975; 1975, c. 771, § 409, eff. Jan. 4, 1977.

Amendments: 1975. Subsection 2, C(2): Chapter 582 substituted "subsections 7 and 8" for "the 3rd and 4th paragraphs" in first sentence and added thereto, "and approved by a majority of the membership of the Legislative Council." Subsection 2, E: Repealed by c. 771. Subsection 2, G: Repealed by c. 582. 1973. Repealed and replaced section.

Appendix IVc

EXAMPLE OF PROVISIONS IN ENERGY ACT
(New York)

Section 5-117: Powers during Energy or Fuel Emergency

1. Upon a finding and declaration by the governor that there exists or impends an energy or fuel supply emergency, which declaration shall state the governor's reasons for such finding, the commissioner shall be authorized, in addition to the powers and duties set forth elsewhere in this chapter, to the extent not in conflict with federal law, notwithstanding any state or local law or contractual agreement, to:

(a) Allocate available supplies of energy or energy resources among areas, users, persons or categories of persons or users. In allocating available supplies, the commissioner shall give priority to energy and energy resources use essential to public health and safety, and shall thereafter attempt to allocate the remaining supply equitably and in a manner designed to avoid undue hardship.

(b) Impose restrictions on any wasteful, inefficient, or nonessential use of energy or energy resources, and upon the promotion of such uses.

(c) Waive state and local environmental protection requirements to the extent necessary for emergency use of energy resources not meeting such requirements for a period of not more than thirty days; provided, however, that an additional thirty days may be granted for good cause. Only one such waiver and one extension thereof may be granted any facility within any six month period.

2. The powers granted to the commissioner pursuant to subdivision one of this section shall be in addition to and not in limitation of any emergency powers now vested in the governor which the governor may choose to delegate to the commissioner.

3. In exercising the powers granted pursuant to subdivisions one and two of this section, the commissioner may supersede any emergency power heretofore vested in any other state agency.

4. No declaration of any energy or fuel supply emergency shall be deemed effective for a period in excess of six months, and no power exercised pursuant to this section shall be effective for a period in excess of six months, unless each house of the legislature shall consent to an extension for a specific period of time.

L.1976, c. 819, § 2.

Section 5-119: Violations; Sanctions

1. Every person shall obey, observe and comply with the provisions of this article and with every order, rule or regulation issued or made pursuant to this article, so long as the same shall be and remain in force. Any person who violates any provision of this article or who fails, omits or neglects to obey, observe or comply with any order, rule or regulation issued pursuant to this article, shall forfeit to the people of the state of New York a civil penalty in a sum to be set by the commissioner not to exceed one thousand dollars for each and every offense or three times the profit received from each violation, whichever is greater. Every violation pursuant thereto, shall be a separate and distinct offense, and, in the case of a continuing violation, every day's continuance thereof shall be a separate and distinct offense.

2. An action to recover a civil penalty under this section may be brought at any time within one year after the cause of action accrued in any court of competent jurisdiction in this state, in the name of the people of the state of New York. Any such action may be referred by the commissioner to the attorney general, who shall prosecute all such actions. In any such action all penalties incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action shall not be a waiver of the right to recover any other penalty. All moneys recovered in any such action, together with the costs thereof, shall be paid into the state treasury to the credit of the general fund.

3. Whenever it shall appear to the commissioner that any person has violated or is violating this article or any order, rule or regulation issued pursuant thereto, he may request the attorney general to bring an action in the supreme court to enjoin such violation and it shall be the duty of the attorney general to seek such injunction. Upon a proper showing, a temporary restraining order, a preliminary injunction or a permanent injunction shall be granted.

L. 1976, c. 819, § 2; amended L. 1976, c. 820, § 11.

Historical Note

1976 Amendment. L. 1976, c. 820, § 11, amended subd. 1 by substituting "article" for "chapter" throughout, and by deleting "subject to this chapter" following "Every person" in the first sentence; deleted former subd. 2 relating to additional penalty; renumbered former subd. 3 as subd. 2; deleted former subd. 4 which related to referring all knowing violations to attorney general for prosecution; and renumbered former subd. 5 as subd. 3.

Section 5-121: Reserved Power of the Governor

Nothing contained in this chapter shall be construed to limit, curtail, abolish or terminate any function or power of the governor which he had prior to the effective date hereof.

L. 1976, c. 819, § 2; amended L. 1976, c. 820, § 11.

Historical Note

1976 Amendment. L. 1976, c. 820, § 11, deleted from the beginning of the section "Except as specifically stated,".

The State of South Carolina

Attorney General
DANIEL R. McLEOD

Attorney General
Columbia

February 2, 1977

Mr. C. Raymond Marvin
Washington Counsel
National Association of Attorneys
General
444 North Capitol Street
Washington, D.C. 20001

Dear Ray:

I am enclosing herewith a copy of an opinion dated October 22, 1973, together with a copy of the Act to which reference is made therein, which is styled "State Civil Defense and Disaster Control Law," in response to your memorandum of January 25, 1977. The construction placed on the statute by me is somewhat stretched but I justify it on the basis of the extraordinary conditions brought about the oil crisis. I have verbally advised the present Governor with respect to the gas shortage.

With best wishes,

Very truly yours,

Daniel R. McLeod
Attorney General

DRM/hm

Enclosures

October 22, 1973

The Honorable John C. West
Governor
Columbia, South Carolina

Dear Governor West:

In response to your inquiry, we have surveyed the statutes which might relate to your authority to impose a charge or surtax upon oil supplies allocated to this State so as to provide a source of funds for the operation of the allocation procedures.

Act No. 128 was approved by you on April 6, 1973. The purpose of that Act is to provide for civil defense and disaster control. Pursuant to its terms, the Governor is authorized to declare a state of emergency if he finds that a disaster has occurred, or that the threat thereof is imminent, and extraordinary measures are necessary to cope with the existing or anticipated situation. "Disaster" means enemy attack, sabotage, conflagration, flood, storm, epidemic, earthquake, riot, or other public calamity. A state of emergency may not continue for a period of more than fifteen days without the consent of the General Assembly.

During the period of emergency and to enable the Governor to discharge his responsibility for the safety, security and welfare of the State, he is authorized to issue emergency proclamations and regulations which shall have the full force and effect of law as long as the emergency exists.

It is my view that the restriction upon the use of oil, which will be nationwide and which may reasonably be expected to attain a greater degree of severity as the Middle East conflict becomes aggravated, and particularly with the onset of the Winter season, creates, in my opinion, the threat of an imminent disaster as contemplated by the provisions of Act No. 128. The necessity with which you are faced of allocating South Carolina's share of national oil supplies will require the expenditure of funds which are not otherwise available.

In my opinion, you have authority under Act No. 128 of 1973 to declare a state of emergency to meet the extraordinary circumstances with which you are faced by reason of a severe shortage of oil. Authority likewise is vested in you, in my opinion, to impose charges for oils distributed under your authority to raise necessary monies for the implementation of distribution procedures.

Very truly yours,

Daniel R. McLeod
Attorney General

DRM/hm

September 5, 1973

The Honorable T. P. Credle
State Coordinator
Office of Emergency Services

This is in reply to your recent letter regarding §§ 44-146.2 through 44-146.12 which reads as follows:

> The Commonwealth of Virginia Emergency Resources Management Plan was developed under authority of subject legislation to provide Emergency Management of Resources in a post nuclear attack situation only.
>
> My office is in the process of revising this plan with a view of introducing improved management procedures; and at the same time, we propose to expand its application to permit the emergency management of resources in any situation where a resource shortage threatens the health, welfare or economic well-being of the citizens of the Commonwealth.
>
> It would appear that the Commonwealth of Virginia Emergency Services and Disaster Law of 1973 (sections 44-146.13 through 44-146.28, Chapter 3.2, Title 44, Code of Virginia) provides the necessary authority to support the emergency management of resources in peace and war; and that the Post Attack Resource Management Act is no longer required. It would also be desirable to have one law which would cover all of the responsibilities of the State Office of Emergency Services.
>
> It is requested that your office review these two pieces of legislation and provide an opinion as to:
>
> a. Whether or not the Commonwealth of Virginia Emergency Services and Disaster Law of 1973:
>
> (1) is considered legally sufficient to support the Emergency Resources Management Plan, thus eliminating the need for the Post Attack Resource Management Act.
>
> (2) provides a legal basis for emergency management of resources in any situation where a resource shortage, e.g., a fuel shortage, threatens the health, welfare or economic well-being of the citizens of the Commonwealth; and if not, what changes to this legislation would be necessary to accomplish this purpose.

Source: Letter from the Attorney General of Virginia to Virginia State Coordinator, Office of Emergency Services.

b. The authority of the Governor to regulate the sale, use or distribution of resources in a situation where a critical shortage develops in peacetime.

The "Post-Attack Resources Management Act" to which you refer is Chapter 3.1 of Title 44 of the Code of Virginia (1950), as amended. (Sections 44-146.2 through 44-146.12 of the Code.) The other Act to which you refer is the "Emergency Services and Disaster Law of 1973," found in Chapter 3.2 of Title 44 of the Code. (§ 44-146.13 through 44-146.28 of the Code.)

Your first question is whether the Emergency Services and Disaster Law of 1973 is broad enough to support the Emergency Resources Management Plan.

Section 44-146.14 of the Code sets forth the purposes of the Emergency Services and Disaster Law. This section recognizes, among other disasters, the contingency of an enemy attack and states the necessity of providing for the common defense and protecting the public peace, health and safety, and preserving the lives and property of the people of Virginia.

Section 44-146.17 of that Act sets forth the powers and duties of the Governor, among these being the duty to coordinate activities relating to the Commonwealth in the event of a man-made disaster. Such a disaster is defined in § 44-146.16 of the Code and atomic disasters are specifically included in that definition.

In light of the foregoing, I am of the opinion that the broad powers and duties conferred by the Emergency Services and Disaster Law are sufficient to support the Emergency Resources Management Plan.

Your second question is whether the Emergency Services and Disaster Law provides a legal basis for emergency management of resources where a shortage of that resource threatens the health, welfare, or economic well-being of the citizens of the Commonwealth.

As indicated earlier, § 44-146.17 of the Code directs the Governor to issue such orders as may be necessary to accomplish the purposes of the Emergency Services Act. If a resource shortage, such as a fuel shortage, is capable of resulting in serious harm to the health, welfare, or property of the people of Virginia, I am of the opinion that the Governor may act to avert that harm. I must insert a caveat, however, and question whether the word "property" as used in § 44-146.14(a), of the Code is synonymous with the phrase "economic well-being." I find no authority in the Act which would allow the Governor to act to protect the people's economic well-being beyond the point of protecting their property as it relates to their public health, safety and lives.

Your final question concerns the authority of the Governor, in peacetime, to regulate a critically short resource with respect to its sale, use or distribution. That inquiry may be answered in essentially the same manner as the preceding question. As indicated earlier, I am of the opinion that if such a shortage threatened the peace, health and safety or the lives and property of the people of the Commonwealth, the Governor would be under a duty to alleviate that threat and regulation of the sale, use or distribution of the resource would be a legitimate means to that end....

Appendix VIa

EXAMPLE STATE DISASTER ACT

Section 5. The Governor and Disaster Emergencies

(a) The Governor is responsible for meeting the dangers to the State and people presented by disasters.

(b) Under this act, the Governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law.

(c) [If desired, use this subsection to authorize establishment of a Governor's Disaster Emergency Council to advise him on matters relating to disasters. If a council is established it may be particularly helpful to include representation of local governments.]

(d) A disaster emergency shall be declared by executive order or proclamation of the Governor if he finds a disaster has occurred or that this occurrence or the threat thereof is imminent. The state of disaster emergency shall continue until the Governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and terminates the state of disaster emergency by executive order or proclamation, but no state of disaster emergency may continue for longer than [30 days] unless renewed by the Governor. The Legislature by concurrent resolution may terminate a state of disaster emergency at any time. Thereupon, the Governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued under this subsection shall indicate the nature of the disaster, the area or areas threatened, the conditions which have brought it about or which make possible termination of the state of disaster emergency. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and unless the circumstances attendant upon the disaster prevent or impede, promptly filed with the State Office of Disaster Emergency Services, the [State records-keeping agency] and the [local records-keeping agency] in the area to which it applies.

(e) An executive order or proclamation of a state of disaster emergency shall activate the disaster response and recovery aspects of the State, local, and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this Act or any other provision of law relating to disaster emergencies.

(f) During the continuance of any state of disaster emergency the Governor is commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty.* To the greatest extent practicable, the Governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or regulations, but nothing herein restricts his authority to do so by orders issued at the time of the disaster emergency.

(g) In addition to any other powers conferred upon the Governor by law, he may:

(1) suspend the provisions of any regulatory statute prescribing the procedures for conduct of State business, or the orders, rules, or regulations of any State agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(2) utilize all available resources of the State Government as reasonably necessary to cope with the disaster emergency and of each political subdivision of the State;

(3) transfer the direction, personnel, or functions of State departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

(4) subject to any applicable requirements for compensation under Section 13, commandeer or utilize any private property if he finds this necessary to cope with the disaster emergency;

(5) direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(6) prescribe routes, modes of transportation, and destinations in connection with evacuation;

(7) control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(8) suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles;

(9) make provision for the availability and use of temporary emergency housing;

(10) Control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means,

* If State police or highway patrols or agencies having similar functions are not otherwise available to the Governor for disaster duty, a provision should be added making them available.

the use, sale or distribution of food, feed, fuel, clothing, and other commodities, materials, goods or services; ** and

(11) Perform and exercise such other functions, powers and duties as may be necessary to promote and secure the safety and protection of the civilian population. **

Commentary--Section 5

Section 5. The Governor and Disaster Emergencies. The clear fixing of responsibility for disaster prevention, preparedness, response, and recovery activities is essential to an effective system. The Governor already occupies a leadership position in these matters by tradition and usage. Moreover, he is the only official in the State whose legal and political position is sufficiently broad to make it possible for him to marshal whatever personnel and resources are most appropriate in dealing with unexpected situations requiring rapid, flexible, and sometimes diverse actions.

Some of the lettered paragraphs of this Section require no special comment. Only those that would benefit from further explanation are identified and discussed below.

Paragraph (b) gives the Governor the basic authority to implement the statute in the normal way--by administrative regulations which then have the same standing as law.

Paragraph (d) provides for the method by which the Governor can bring a state of disaster emergency into being. On the whole this procedure is similar to the one now used in most States. However, several features of this Paragraph are either unusual or are worthy of special attention.

It should be noted that it is required that a proclamation or order declaring an emergency must be filed promptly with appropriate State and local recordskeeping agencies. Since a state of disaster emergency has legal consequences it is important that evidentiary documents with respect to its existence, duration, and the circumstances surrounding it be made matters of public record. For this reason the minimum contents of the proclamation or order are also prescribed.

Finally, either the Governor or the Legislature can terminate a state of disaster emergency, and limitations are set on its duration. Such provisions are included because the powers to be exercised during a disaster emergency are extraordinary ones and so should be confined to the periods intended by law.

Paragraph (e) indicates some of the consequences which result from a gubernatorial declaration of a state of disaster emergency. In particular it is meant to provide the basis for the use and distribution of materials, supplies, and equipment specially kept for use in connection with such

** Provisions (10) and (11) are the recommended amendments to extend Disaster Act legislation to clearly include energy emergency situations. The amendment was drafted by Missouri officials.

emergencies. Further, this provision is the basis for calling the disaster plans previously made into operation.

Paragraph (f) is partially declaratory of the law as it is generally understood. The Governor is normally commander-in-chief of the forces referred to. In addition, the Paragraph gives direction to certain types of procedures which should be employed. Ideally, preparation to meet disasters should be thorough enough so everyone knows his responsibilities in advance. However, it is recognized that human foresight is far from perfect and that the law must allow for decisions to be made and orders issued on the basis of conditions as they actually are at any given moment. Accordingly, the provision establishes a policy of preparing and using as many orders as possible on a standby basis, but makes it clear that orders issued in time of disaster are valid.

Paragraph (g) enumerates a number of specific actions that may be taken to cope with disasters. Consequently, it constitutes the legal authority for them to be taken. They are of three basic kinds: suspension of normal routines during emergencies, operational measures, and measures for good order.

A special word may be appropriate in reference to the authority to suspend the provisions of regularly applicable laws relating to the conduct of State activities or otherwise affecting conduct in normal times. Many requirements are designed to afford procedural protections such as notice of actions about to be taken. Others are designed as good practice in most circumstances. Also, laws relating to the administrative structure and performance of the State Government usually presume that reasonable amounts of time are available and that good government requires the following prescribed routines.

In times of emergency it is often necessary to make exceptions on an ad hoc basis and to improvise in order to forestall impending catastrophe or to ameliorate serious conditions that have suddenly arisen. These considerations are important to an understanding of this Paragraph.

This model is part of a report that was issued by the Council of State Governments in 1973, when concern had arisen about an impending energy crisis. The report was again distributed in January 1977 in light of "the winter of 1977."

Appendix VIb

STATE EMERGENCY CRISIS MANAGEMENT ACT

Be it enacted

Section 1. Short Title

This act may be cited as the State Emergency Crisis Management Act.

Section 2. Findings, Purposes and Policy

It is hereby found and declared that it is necessary because of the crisis in the availability of essential resources and transportation and the operation of the economy now threatening the health, safety and welfare of the people of this State and of the United States of America to grant to the Governor of this State and its political subdivisions emergency powers of crisis management and the incidents thereof enumerated herein. It is further declared to be the purpose of this Act and the policy of the States thereby to assist the President of the United States in effective management and control of such factors and situations which occasion and contribute to this emergency, to cooperate with other States and the Federal Government in matters relating to the crisis effort, to meet the extraordinary conditions and problems resulting in this State from the crisis by establishing such organizations and taking such steps as are necessary and appropriate to carry out the provisions of this Act; and, generally, to meet this crisis, protect peace, health and safety and preserve the lives and property of the people of the State.

Section 3. General Emergency Crisis Management

Powers of the Governor:

The Governor is authorized and empowered:

(a) Cooperation with Federal and State Governments.

To cooperate with the President of the United States of America and federal departments, agencies and independent establishments, and the offices and agencies of other states in matters pertaining to the crisis and the

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This model is part of a report that was issued by the Council of State Governments in 1973, when concern had arisen about an impending energy crisis. The report was again distributed in January 1977 in light of "the winter of 1977."

common defense of State and Nation and the incidents thereof; and in connection therewith, to take any measures which he may deem proper to carry into effect any request of the President and such other Federal officers and agencies as may be charged with responsibilities related to the crisis effort, for any action looking to effective management of the crisis, the protection of the public peace, health, and safety, or the preservation of life, property and the operation of the economy and society within the State.

(b) Use of Property, Services, and Resources

To use and employ within the State, from time to time, and as he may deem expedient any of the property, services and resources of the State for the purposes set forth in this Act.

(c) Compliance

To employ such measures and give such directions to state and local officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Act and with the orders, rules and regulations made pursuant thereto;

(d) Organization (1) To utilize the services and facilities of existing officers, offices, departments, commissions, boards, bureaus, institutions and other agencies of the State and of the political subdivisions thereof and all such officers and agencies shall cooperate with and extend their services and facilities to the Governor as he may request.

(e) To recommend to the legislature the establishment of such agencies and offices and any additional action that he deems necessary to carry out the provisions of this Act or any broadening of the policies or authorizations contained herein.

Section 4. Investigations, Surveys to ascertain the degree and impact of the crisis on Industrial Production, Materials, Supplies, Transportation and Facilities in this State.

(a) The Governor is authorized and empowered to ascertain and identify the number and situation and need for regulation or control of factors creating or contributing to an emergency including but not limited to the following: food, fuel, energy, power, clothing, transportation, facilities, chemicals, chlorine gas, petro chemicals, toxic poisons, steel plates, bolts, insecticides, fertilizers, forage, and domestic animals and fowl, and other necessities of life, and the production, manufacture or processing and distribution of the same; to make such other surveys of the industries, resources and facilities of the State and the possibilities and means of coordinating and implementing their provision in this State and those from other States as are necessary to carry out the purposes of this Act; and in making such investigations and surveys, to compel by subpoena the attendance of witnesses, and the production of books, papers, records, and documents of individuals, firms, associations, and corporations; and all officers, boards, commissions and departments of the State, and the political subdivisions thereof, having information with respect thereto, shall cooperate with and assist him in making such investigations and surveys.

Section 5. Effectuation of Emergency Crisis Management

To provide for emergency resource management, and pursuant to a proclamation by the Governor that an emergency exists, due to a threatened disruption of the social order imperiling health and safety, the Governor may by rule or executive order:

(a) Control, restrict and regulate by rationing, freezing, use of quotas, allocations, prohibitions on shipments, price fixing, allocation or other means, the use, sale or distribution of food, feed, fuel, and other sources of energy, clothing and other commodities, materials, goods and services;

(b) Prescribe and direct activities in connection with but not limited to use, conservation, salvage and prevention of waste of materials, services and facilities, including production, transportation, power and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care and other essential civil needs; and

(c) Take such other action as may be necessary for the management of resources during an emergency declared by the Governor.

Such emergency powers will terminate upon the Governor's declaration that the emergency no longer exists, or by concurrent resolution of the Legislative Assembly.

Section 6. Traffic Control

The Governor may formulate and execute plans and regulations for the control of traffic in order to provide for orderly and safe movement over public highways and streets of vehicles, people, and materials at a desirable rate of energy consumption and may coordinate the activities of the departments or agencies of the State and of the political subdivisions thereof concerned directly or indirectly with public highways and streets, in a manner which will effectuate the effective conservation management of fuels and energy.

Section 7. Lease or Loan of State Property; Transfer of State Personnel. Notwithstanding any inconsistent provision of law, general, special or local:

Action by Governor. Whenever he deems it to be in the public interest, to meet a crisis the Governor may:

(1) Authorize any department or agency of the State to lease or lend, on such terms and conditions as he may deem necessary to promote the public welfare and protect the interests of the State, any real or personal property of the State, or authorize the temporary transfer or employment of personnel of the State.

(2) Enter into a contract on behalf of the State for the lease or loan, on such terms and conditions as he may deem necessary to promote the public welfare and protect the interests of the State, of any real or personal property of the State, or the temporary transfer or employment of personnel of the State to or by any political subdivision of the State.

Section 8. Emergency Powers of Political Subdivisions

To protect life and property, the (chief executive) (governing body) of each political subdivision of the State is hereby authorized to carry out in (his) (its) jurisdiction such measures as may be ordered by the Governor and such additional measures as such (chief executive) (governing body) may deem necessary, subject to the limitations and provisions of this Act; provided, that no such action shall be inconsistent with any order, rule, regulations, or action of the Governor.

Section 9. Enforcement

The law enforcing authorities of the State and of the political subdivisions thereof shall enforce the orders, rules, and regulations issued pursuant to this Act.

Section 10. Orders, Rules and Regulations

(a) By the Governor. The Governor may make, amend, and rescind such orders, rules, and regulations as he may deem advisable to carry out the provisions of this Act.

(b) Supplementary Orders, Rules, and Regulations by Political Subdivisions and Other Agencies. The political subdivisions of the State and other agencies designated or appointed by the Governor are authorized and empowered to make, amend, and rescind such orders, rules, or regulations promulgated by the Governor or by any State agency exercising a power delegated to it by him.

(c) Effect of Orders, Rules, and Regulations. All orders, rules, and regulations promulgated by the Governor, or by any political subdivision or other agency authorized by this Act to make orders, rules, and regulations, shall have the full force and effect of law, when, in the event of issuance by the Governor, or any State agency, a copy thereof is filed in the Office of the Secretary of State, or, if promulgated by a political subdivision of the State or agency thereof, when filed in the Office of the Clerk of the political subdivision or agency promulgating the same. All existing laws, ordinances, rules, and regulations inconsistent with the provisions of this Act, or of any order, rule, or regulation issued under the authority of this Act, shall be suspended during the period of time and to the extent that such conflict exists.

(d) Not Inconsistent with Federal Action. In order to attain uniformity so far as practicable throughout the country in measures taken to aid in crisis management, all action taken under this Act and all orders, rules, and regulations made pursuant thereto where not already specifically provided for herein, shall be taken or made with due consideration to the orders, rules, regulations, actions, recommendations, and requests of Federal authorities relevant thereto and, to the extent permitted by law, shall be consistent with such orders, rules, regulations, actions, recommendations and requests.

Section 11. Liberality of Construction.

This Act shall be construed liberally in order to effectuate its purposes.

Section 12. Severability.

If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Section 13. Effective Date; Termination.

This Act shall take effect immediately and shall remain in force until January 1, 1976.